



ARIZONA STATE SENATE
Fifty-Second Legislature, Second Regular Session

FINAL AMENDED
FACT SHEET FOR S.B. 1293

mediation; confidential communications; exception

Purpose

Permits a court-appointed mediator to disclose confidential information to law enforcement, the Department of Child Safety (DCS) or Adult Protective Services (APS) under specified circumstances.

Background

Mediation is a process whereby parties involved in a dispute enter into one or more private settlement discussions outside of a formal court proceeding with a neutral third party to try to resolve the dispute. Mediation may occur pursuant to law, a court order or a voluntary decision of the parties before or after the filing of a complaint. A mediator is not subject to civil liability except for those acts or omissions that involve intentional misconduct or reckless disregard of a substantial risk of a significant injury to the rights of others (A.R.S. § 12-2238).

The mediation process is confidential. Communications made, materials created for or used, and acts occurring during a mediation are privileged and may not be discovered or admitted into evidence unless: 1) all of the parties agree to the disclosure; 2) the communication, material or act is relevant to a claim or defense made by a party against the mediator or the mediation program, as specified; 3) the disclosure is required by statute; or 4) the disclosure is necessary to enforce an agreement to mediate.

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Provides an exception to the confidentiality of the mediation process when disclosure is made:
 - a) in a report to a law enforcement officer, DCS or APS; and
 - b) by a court-appointed mediator who reasonably believes that a minor or vulnerable adult is or has been a victim of abuse, child abuse, neglect, exploitation, physical injury or a reportable offense.
2. Subjects mediators to service of process or subpoena related to the above disclosure.

3. Defines terms.
4. Makes technical and conforming changes.
5. Becomes effective on the general effective date.

Amendments Adopted by the House of Representatives

- Adds *exploitation* as an offense mediators may disclose and removes the restriction regarding service of process or subpoena related to disclosure.

Senate Action

JUD	1/28/16	DP	7-0-0
3 rd Read	2/8/16		30-0-0
Final Read	5/4/16		28-0-2

House Action

JUD	3/16/16	DPA	6-0-0
3 rd Read	3/30/16		56-0-4

Signed by the Governor 5/18/16
Chapter 338

Prepared by Senate Research
June 30, 2016
AW/rf